company contracted to convey to the plaintiff's testator 640 acres out of the land it should hold at a certain time, of the same average probable value per acre as the remaining lands it should then hold, to be selected by the agent of the defendant company. At the time for performance the defendant company owned 6,320 acres. The plaintiff, who has fully performed, appeals from a decree dismissing his suit for specific performance. *Held*, that the decree be reversed. *Williams* v. *Cow Gulch Oil Co.*, 270 Fed. 9 (8th Circ.).

Because of practical considerations, it is generally recognized that a greater degree of certainty is necessary for specific enforcement of a contract than for enforcement at law. See POMEROY, SPECIFIC PERFORMANCE, § 159; FRY, SPECIFIC PERFORMANCE, 6 ed., § 380. On the ground of uncertainty, the weight of authority denies specific performance of a contract to convey a certain amount of land to be selected by the vendor out of a larger tract. *Rampke* v. *Beuhler*, 203 Ill. 384, 67 N. E. 796; *Auer* v. *Mathews*, 129 Wis. 143, 108 N. W. 45. See also *Pearce* v. *Watts*, L. R. 20 Eq. 492. There is, however, respectable authority to the contrary. *Fleishman* v. *Woods*, 135 Cal. 256, 67 Pac. 276. *Cf. Jenkins* v. *Green* (*No. 1*), 27 Beav. 437. The minority view, with which the principal case accords, seems more reasonable. The requirement of certainty, coming largely from history, has been overemphasized. See Roscoe Pound, "Progress of the Law — Equity," 33 HARV. L. REV. 420, 434; 3 WILLISTON, CONTRACTS, § 1424. If the fact of performance can be determined by objective standards, there should be no objection to ordering the defendant to perform, choosing from the alternatives which the contract gives him. *Jones* v. *Parker*, 163 Mass. 564, 40 N. E. 1044. In the principal case, moreover, the plaintiff had already performed. This circumstance makes a court of equity more ready to give relief. *Sanderson* v. *Cockermouth & Worthington Ry. Co.*, 11 Beav. 497, aff'd, 2 H. & T. 327; *South Eastern Ry. Co.* v. *Associated Portland Cement Manufacturers*, [1910] 1 Ch. 12. See also, *Gunton* v. *Carroll*, 101 U. S. 426; *Lowe* v. *Brown*, 22 Ohio St. 463. The court properly does not even mention certain entirely unfounded *dicta* that the requisite of certainty is greater when some one other than the original party to the contract is suing. See *Odell* v. *Morin*, 5 Ore. 96, 98; *Montgomery* v. *Norris*, 1 How. (Miss.) 499, 506.

STATES — LIABILITIES ARISING FROM GOVERNMENTAL INDUSTRIES. — A North Dakota statute provides that the state shall establish a bank, to be financed by sale of state bonds, to be operated by a state Administrative Commission. (1919 LAWS OF N. D., c. 147.) Provision is made for bringing civil actions against the "State, Doing Business as the Bank of North Dakota." (*Ibid.*, § 22.) The plaintiff, a depositor, seeks to garnish credits of the bank. The remedy of garnishment is not by the statute made applicable to the state. From an order refusing to vacate garnishment proceedings, the defendant appeals. *Held*, that the order be affirmed. *Sargent County* v. *State, Doing Business as the Bank of North Dakota*, 182 N. W. 270 (N. D.).

For a discussion of the principles involved, see NOTES, *supra*, p. 335.

TAXATION — INHERITANCE TAXES — TRANSFERS IN CONTEMPLATION OF DEATH. — The plaintiff seeks to recover taxes paid under protest under the provision of the federal inheritance tax statute taxing conveyances in contemplation of death. (39 STAT. AT L. 777; U. S. COMP. ST., § 6336½c.) The trial court refused to charge the jury that "in contemplation of death" refers only to the "apprehension which arises from some existing condition of body or some impending peril" but instructed that the transfer is "in contemplation of death if the expectation or anticipation of death in either the immediate or reasonably distant future is the moving cause of the transfer." *Held*, that there was no error. *Shwab* v. *Doyle*, 269 Fed. 321 (6th Circ.).

Under the New York transfer tax law the earlier decisions held that, in the absence of an intent to evade taxes, only gifts *causa mortis* were to be considered as being in contemplation of death. *Matter of Spaulding*, 49 App. Div. 541, 63 N. Y. Supp. 694, aff'd, 163 N. Y. 607, 57 N. E. 1124; *Matter of Cornell*, 66 App. Div. 162, 73 N. Y. Supp. 32 (reversed on other grounds, 170 N. Y. 423, 63 N. E. 445). But it is now well settled that, although its literal meaning is ambiguous, the provision also applies to transfers *inter vivos*. *Matter of Palmer*, 117 App. Div. 360, 102 N. Y. Supp. 236; *Merrifield's Estate* v. *People*, 212 Ill. 400, 72 N. E. 446. See ROSS, INHERITANCE TAXATION, § 120. Nor is an intent to evade taxes necessary. *Rosenthal* v. *People*, 211 Ill. 306, 71 N. E. 1121. This interpretation seems correct, since the purpose of the provision is to tax all transfers that are intended to be of a nature and effect similar to testamentary bequests. *Conway's Estate* v. *State*, 120 N. E. 717 (Ind. App.); *State* v. *Pabst*, 139 Wis. 561, 131 N. W. 351. See ROSS, INHERITANCE TAXATION, § 111. The court in this case properly holds that the cause of the donor's expectation of death is immaterial, and that this expectation need not be of immediate death; it being sufficient that anticipation of death in the reasonably close future is the moving cause of the transfer, since the donor would in such a case intend a result substantially similar to that of a testamentary disposition. See also *Conway's Estate* v. *State*, *supra*. Old age and illness of the donor are, of course, strong evidence that the transfer is of this nature. *Matter of Dee*, 148 N. Y. Supp. 423 (Surr. Ct.), aff'd, 210 N. Y. 625, 104 N. E. 1128. But since in any case the impelling motive may not be the expectation of death, the bodily condition of the donor is not conclusive. *People* v. *Burkhalter*, 247 Ill. 600, 93 N. E. 379; *State* v. *Thompson*, 154 Wis. 320, 142 N. W. 647.

TAXATION — COLLECTION AND ENFORCEMENT — NATURE OF DOUBLE TAX UNDER NATIONAL PROHIBITION ACT. — The National Prohibition Act provides that upon evidence of an illegal manufacture or sale of intoxicating liquor "a tax shall be . . . collected . . . in double the amount now provided by law, with an additional penalty of $500 on retail dealers and $1000 on manufacturers." (41 STAT. AT L. 305, 318.) The plaintiff seeks to restrain the defendant from collecting the "double tax" by warrant of distress. *Held*, that the bill be dismissed. *Kelly* v. *Lewellyn*, 274 Fed. 108 (W. D. Pa.).

Federal courts agree on enjoining the collection of penalties by warrant of distress. *Kausch* v. *Moore*, 268 Fed. 668 (E. D. Mo.); *Kelly* v. *Lewellyn*, 274 Fed. 112 (W. D. Pa.). On the other hand, a federal statute forbids enjoining the collection of taxes, by warrant of distress or otherwise. See 1875 U. S. REV. STAT., § 3224. It is therefore necessary to determine whether the tax of double the ordinary amount, imposed by the National Prohibition Act, is a tax or a penalty. Since a tax does not, as a license does, confer authority to do the act affected, it is clear that the sovereign has power to tax acts which at the same time it declares illegal. See 2 COOLEY, TAXATION, 3 ed., 1134. Such taxes are, however, so unusual that a very clear intent that the charge be a tax should be required before so construing it. See *Thome* v. *Lynch*, 269 Fed. 995, 1003 (D. Minn.). Merely naming a charge a tax, though it has some bearing, is not conclusive. *Helwig* v. *U. S.*, 188 U. S. 605. *Cf. Hodge* v. *Muscatine County*, 196 U. S. 276. But see *Lipke* v. *Lederer*, 274 Fed. 493 (E. D. Pa.). In view of the fact that a tax is a revenue measure, while a penalty is a punishment, the fact that a greater charge is imposed when an act is illegally done than when the same act is legally done is a strong indication that the imposition, at least to the extent that it exceeds the ordinary tax, is a penalty. On the whole, the decisions reaching a result *contra* to the principal case seem preferable. *Ledbetter* v. *Bailey*, 274 Fed. 375 (W. D. N. C.); *Thome* v. *Lynch*, *supra*.